

Article 5. Administration and Registration of Condominiums (Recodification Draft #1)

	<u>Hawaii Condominium Law Recodification Draft #1</u> [Based on Comparison of UCIOA (1994), UCA (1980), and HRS Chapter 514A; organization follows Uniform Laws]	<u>Hawaii's Present Condominium Law</u> Chapter 514A, Hawaii Revised Statutes (HRS) (Compare with Proposed Recodified Condominium Law in left-hand column)
	<p style="text-align: center;">UCA (1980) Prefatory Comment to Article 5</p> <p>Administrative agencies have become an essential and accepted part of state government. Accordingly, the procedures by which those agencies adopt their rules and reach their decisions, as well as the powers of those agencies, have assumed great importance.</p> <p>The existence of government regulation reflects the common belief that adequate enforcement of a particular field of law requires both public oversight of private compliance with law, and an ability in government to promulgate new regulations to meet new circumstances. Often, regulation also reflects the regulated industry's desires for certainty and for an administrative agency knowledgeable of, and perhaps sympathetic to, the needs of the industry.</p> <p>At the same time, in some states the public's response to administrative regulation has become increasingly negative. The adoption of so-called "sunshine" and "sunset" laws, consolidation or merger of many agencies, and abolition of some outmoded boards and commissions, reflect a growing public perception that administrative enforcement may at times be neither efficient nor effective.</p> <p>The debate on the general desirability of state agency regulation is reflected in the question of regulation of condominium development. While many states with widespread condominium activity, such as California, Florida, Virginia, and New York, have created agencies to regulate condominiums or have placed the regulation of condominiums in an existing governmental body, other states with substantial condominium activity, such as Illinois and Maryland, have chosen not to regulate condominiums, relying instead on the private market and lenders for consumer protection.</p> <p>State administrative law does not demand uniformity between the States. For example, the Revised Model State Administrative Procedure Act (1961), noted that there was a demand for an act covering that subject, but that administrative procedure was a subject upon which uniformity between the states was neither necessary nor desirable. "Every student of administrative law recognizes that many of the procedural details involved in administrative action must necessarily vary more or less from state to state and even from agency to agency within the same state." Comment, <i>Content of the Model State Administrative Procedure Act</i>, Uniform Laws Annotated, Master Edition (see U.L.A. Directory of Acts for location).</p> <p>The same reasoning applies to the law of condominiums. While uniform substantive law regarding condominiums and the protection to be provided to consumers is important, the means by which the substantive law is enforced does not require uniformity. Nevertheless, it appears desirable to provide the states the option of choosing agency regulation of condominiums, as many states have already chosen to do, by providing an optional article on agency administration which is closely integrated with the Uniform Condominium Act.</p> <p>Accordingly, Article 5 may or may not be adopted, depending on whether or not a state chooses to have agency regulation. The article has been drafted in such a way as to minimize the number of changes necessary in the body of the first four articles of the Act.</p>	<p style="text-align: center;">Condominium Attorney's Prefatory Comment to Article 5</p> <p>[To be drafted: Description of changes to existing processes and practices under recodification.]</p>

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<p>However, in order to provide for close integration of Article 5 with the remainder of the Act, there are a number of sections in the Act where bracketed references to the agency or to Article 5 now exist. These sections are Sections 1-102(c), 1-103(10)(b), 2-101(b), 2-101(c), 3-103(f), 3-104(e)(3), and 4-105. <i>[Note: There are no Sections 1-103(10)(b) or 2-101(c). Section 3-103(f) does not refer to the agency or Article 5. Section 4-105 does not refer to the agency or Article 5, but Section 4-107 does.]</i> In the event that a state determines not to adopt Article 5, the bracketed clauses or provisions in each of the above sections which refer to Article 5 should be deleted. In the event a state adopts Article 5, the brackets should be removed and the clauses or provisions retained.</p>	
<p style="text-align: center;">TABLE OF CONTENTS</p> <p>ARTICLE 5. ADMINISTRATION AND REGISTRATION OF CONDOMINIUMS</p> <p>§ 5-101. Administrative Agency</p> <p>§ 5-101.1. Deposit of Fees</p> <p>§ 5-101.2. Condominium Education Fund</p> <p>§ 5-101.3. Same; Payments to Fund</p> <p>§ 5-101.4. Same; Management of Fund</p> <p>§ 5-101.5. Condominium Specialists; Appointment; Duties</p> <p>§ 5-102. Registration Required</p> <p>§ 5-103. Application for Registration; Approval of Uncompleted Units</p> <p>§ 5-103.1. Same; Condominiums Containing Conversion Buildings</p> <p>§ 5-104. Receipt of Application; Order of Registration</p> <p>§ 5-105. Cease and Desist Orders</p> <p>§ 5-106. Revocation of Registration</p> <p>§ 5-106.1. Civil Penalty</p> <p>§ 5-106.2. Limitation of Action</p> <p>§ 5-107. General Powers and Duties of Agency</p> <p>§ 5-108. Investigative Powers of Agency</p> <p>§ 5-109. Annual Report and Amendments</p> <p>§ 5-110. Agency Regulation of Public Offering Statement</p>	<p style="text-align: center;">Condominium Recodification Attorney's Comment</p> <p>The provisions of HRS Chapter 514A below are meant to be used for comparison with the provisions of Hawaii Condominium Law Recodification Draft #1. If you do not see a comparable recodification provision immediately to the left of the HRS provision, that means that we have chosen not to incorporate the HRS provision in our new law.</p>
<p>ARTICLE 5. ADMINISTRATION AND REGISTRATION OF CONDOMINIUMS</p>	<p>PART III. REGISTRATION AND ADMINISTRATION</p>
<p>§ 5-101. Administrative Agency. As used in this chapter, "commission" means real estate commission, which is an agency within the meaning of chapter 91.</p>	<p>[See, §514A-3 above, which in pertinent part reads: "'Commission' means the real estate commission of the state department of commerce and consumer affairs."]</p> <p>[See <i>also</i>, §514A-7 above, relating to "Condominium Specialist; appointment; duties."]</p>
<p>[UCA/UCIOA language below for information only.]</p> <p>§ 5-101. Administrative Agency. As used in this Act, "agency" means (insert appropriate administrative agency), which is an agency within the meaning of (insert appropriate reference to state administrative procedure act). (Insert any related provisions on creation, selection, and remuneration of personnel, budget, annual reports, fees, and other administrative provisions appropriate to the particular state).</p>	<p>[See <i>also</i>, §514A-38 below, which in pertinent part reads: "The director of commerce and consumer affairs may contract with private consultants for the review of documents and information submitted to the commission pursuant to this chapter. The cost of such review by private consultants shall be borne by the developer."]</p>
<p>UCA (1980) Comment [as updated by UCIOA (1994); Comment essentially same]</p>	

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	<p>1. Each state should insert in lieu of the bracketed language in the first sentence that agency, whether it be the Real Estate Commission, the Attorney General's Office, or any other existing or new agency, which the state deems appropriate for regulation of condominiums.</p> <p>2. The 1961 Revised Model State Administrative Procedure Act (the "Model Act") had been adopted in 20 states and the District of Columbia by 1981. The appropriate reference in those states to the definition of "Agency" would be the statute adopting Section 1(1) of the Model Act. In those states which have not adopted the Model Act, reference to a similar statute should be made to insure that the procedures of the agency regulating condominiums are undertaken in accordance with the principles of procedural due process which underlie the Model Act. In those states which do not have an administrative procedure act, appropriate administrative procedures should be included, either in this section or elsewhere in this article, to provide for hearings, appellate review, regulations, and other administrative matters.</p> <p>3. As indicated, Article 5 was not designed to solve all procedural matters which are appropriate for an agency. Rather, the Act relies on the cross reference to a state administrative procedure act. Even in such states, however, it may be appropriate to include other provisions, either in Section 5-101 or elsewhere in this article, which are necessary under state practice to insure the proper functioning of a state agency. This might include budget authority, salary levels, civil service requirements, and the like. This may be particularly important when a new state agency is created.</p>	
	<p>§ 5-101.1. Deposit of fees. All fees collected under this chapter shall, unless otherwise provided in this chapter, be deposited by the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o).</p>	<p>§514A-44 Deposit of fees. All fees collected under this chapter shall, unless otherwise provided in this chapter, be deposited by the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o).</p>
	<p>§ 5-101.2. Condominium Education Fund. (a) The commission shall establish a condominium education fund that the commission may use for educational purposes. Educational purposes shall include financing or promoting:</p> <ul style="list-style-type: none"> (1) education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public and those required to be registered under this chapter; (2) the improvement and more efficient administration of condominium associations; and (3) expeditious and inexpensive procedures for resolving condominium association disputes. <p>(b) The commission may use any and all moneys in the condominium management education fund for purposes consistent with subsection (a).</p>	<p>[§514A-131] Condominium management education fund. (a) The real estate commission shall establish a condominium management education fund that the commission may use for educational purposes. Educational purposes shall include financing or promoting:</p> <ul style="list-style-type: none"> (1) Education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public and those required to be registered under this chapter; (2) The improvement and more efficient administration of condominium associations; and (3) Expeditious and inexpensive procedures for resolving condominium association disputes. <p>(b) The commission may use any and all moneys in the condominium management education fund for purposes consistent with subsection (a).</p>
	<p>§ 5-101.3. Same; Payments to Fund. (a) Each condominium or unit owners' association with six or more units shall pay to the department of commerce and consumer affairs the condominium education fund fee on or before June 30 of</p>	<p>§514A-132 Payments to the fund. (a) Each condominium project or association of apartment owners with six or more apartments shall pay to the department of commerce and consumer affairs the condominium management education fund fee</p>

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<p>every odd-numbered year or within thirty days of the unit owners' association first meeting or within one year after the recordation of the purchase of the first unit, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.</p> <p>(b) Payments of any fees required under this section shall be due on or before the registration due date and shall be nonrefundable. Failure to pay the required fee by the due date shall result in a penalty assessment of ten per cent of the amount due and the unit owners' association shall not have standing to bring any action to collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of a unit owners' association to pay a fee required under this section shall not impair the validity of any claim of the unit owners' association for common expenses or other assessments, or prevent the unit owners' association from defending any action in any court of this State.</p> <p>(c) All declarants shall pay into the condominium education fund a nonrefundable fee of \$5 for each unit in the condominium. Fees required by this subsection shall be subject to adjustment as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. The condominium shall not be registered until such payment is made.</p> <p>(d) The department of commerce and consumer affairs shall allocate the fees collected to the condominium education fund established pursuant to section 5-101.2.</p>	<p>on or before June 30 of an odd-numbered year or within thirty days of the association of apartment owners' first meeting or within one year after the recordation of the purchase of the first apartment, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.</p> <p>(b) The department of commerce and consumer affairs shall allocate the fees collected to the condominium management education fund established pursuant to section 514A-131.</p> <p>(c) Payments of any fees required under this section shall be due on or before the registration due date and shall be nonrefundable. Failure to pay the required fee by the due date, shall result in a penalty assessment of ten per cent of the amount due and the association of apartment owners shall not have standing to bring any action to collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of an association of apartment owners to pay a fee required under this section shall not impair the validity of any claim of the association of apartment owners for common expenses or other assessments, or prevent the association of apartment owners from defending any action in any court of this State.</p>
<p>§ 5-101.4. Same; Management of Fund. (a) The sums received by the commission for deposit in the condominium education fund shall be held by the commission in trust for carrying out the purpose of the fund.</p> <p>(b) The commission and the director of commerce and consumer affairs may use moneys in the condominium education fund to employ necessary personnel not subject to chapters 76 and 77 for additional staff support, to provide office space, and to purchase equipment, furniture, and supplies required by the commission to carry out its responsibilities under this part.</p> <p>(c) The moneys in the condominium education fund may be invested and reinvested together with the real estate education fund established under section 467-19 in the same manner as are the funds of the employees retirement system of the State. The interest from these investments shall be deposited to the credit of the condominium education fund.</p> <p>(d) The commission shall annually submit to the legislature, prior to the convening of each regular session:</p> <p style="padding-left: 40px;">(1) A summary of the programs funded during the prior fiscal year and the amount of money in the fund, and</p> <p style="padding-left: 40px;">(2) A copy of the budget for the current fiscal year, including summary information on programs which were funded or are to be funded.</p>	<p>§514A-133 Management of fund. (a) The sums received by the commission for deposit in the condominium management education fund shall be held by the commission in trust for carrying out the purpose of the fund.</p> <p>(b) The commission and the director of commerce and consumer affairs may use moneys in the condominium management education fund to employ necessary personnel not subject to chapters 76 and 77 for additional staff support, to provide office space, and to purchase equipment, furniture, and supplies required by the commission to carry out its responsibilities under this part.</p> <p>(c) The moneys in the condominium management education fund may be invested and reinvested together with the real estate education fund established under section 467-19 in the same manner as are the funds of the employees retirement system of the State. The interest from these investments shall be deposited to the credit of the condominium management education fund.</p> <p>(d) The commission shall annually submit to the legislature, prior to the convening of each regular session:</p> <p style="padding-left: 40px;">(1) A summary of the programs funded during the prior fiscal year and the amount of money in the fund, and</p> <p style="padding-left: 40px;">(2) A copy of the budget for the current fiscal year, including summary information on programs which were funded or are to be funded.</p>

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<p>§ 5-101.5. Condominium Specialist; Appointment; Duties. There are established two permanent condominium specialist positions within the department of commerce and consumer affairs to assist consumers with information, advice, and referral on any matter relating to this chapter or otherwise concerning condominiums. There is also established a permanent secretarial position to provide assistance in carrying out these duties. The condominium specialists and secretary shall be appointed by the director of commerce and consumer affairs without regard to chapters 76 and 77. The condominium specialists and secretary shall be members of the employees retirement system of the State and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State.</p>	<p>[§514A-7] Condominium specialist; appointment; duties. There are established two permanent condominium specialist positions within the department of commerce and consumer affairs to assist consumers with information, advice, and referral on any matter relating to this chapter or otherwise concerning condominium property regimes. There is also established a permanent secretarial position to provide assistance in carrying out these duties. The condominium specialists and secretary shall be appointed by the director of commerce and consumer affairs without regard to chapters 76 and 77. The condominium specialists and secretary shall be members of the employees retirement system of the State and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State.</p>
	<p style="text-align: center;">Condominium Recodification Attorney's Comment</p> <p>1. §§5-101.1 through 5-101.5 were administrative provisions that were scattered throughout HRS Chapter 514A. It makes sense to group them together here.</p> <p>[Question: Is it a "secretarial" or "administrative assistant" position that should be established under §5-101.5?]</p>
<p>§ 5-102. Registration Required. A declarant may not offer or dispose of a unit intended for residential use unless the condominium and the unit are registered with the agency, but a condominium consisting of no more than [42] 5 units and which is not subject to development rights is exempt from the requirements of this section and Section 5-103(a).</p>	<p>§514A-31 Notification of intention. (a) Prior to the time when apartments in a condominium project are to be offered for sale in this State, the developer shall register the project with the commission by notifying the commission in writing of the developer's intention to sell such apartments. No offer of sale or sale shall be made until the project has been registered with the commission and the commission has issued an effective date for the project's preliminary, contingent final, or final public report.</p> <p>(b) Prior to the time when a developer offers or proposes to offer for sale a time share plan located in a condominium project where apartments are being offered or proposed to be offered for sale for the first time to the public, the developer shall register the project with the commission and obtain an effective date for the developer's public report; provided that the developer shall not be required to deliver to a prospective purchaser or purchaser a true copy of the developer's public report or disclosure abstract, as required by this chapter, when a time share plan is duly registered under chapter 514E, and for which a disclosure statement under chapter 514E is effective and required to be delivered to the purchaser or prospective purchaser.</p>
	<p>[See also, §514A-1.5 above, which in pertinent part reads: ". . . any condominium project or association of apartment owners created prior to May 29, 1963, pursuant to Act 180, Session Laws of Hawaii 1961, having seven or more apartments shall register with the commission and comply with the requirements pursuant to sections 514A-95.1 and 514A-132, except for the fidelity bond requirement."]</p>
<p style="text-align: center;">UCA (1980) Comment [UCIOA (1994) Comment essentially same]</p> <p>1. Registration of a condominium is only required in the case of a condominium or unit intended for residential use. Commercial and industrial condominiums, accordingly, are exempt from registration under this Act. Also exempt from the requirement of</p>	<p style="text-align: center;">Condominium Recodification Attorney's Comment</p> <p>UCIOA and UCA exempt small (no more than 12 units) cooperatives and planned communities (but not condominiums) from their provisions.</p>

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	<p>registration is a small condominium containing 12 or fewer units, so long as the condominium is not subject to development rights. However, the small condominium and the industrial or commercial condominium are still subject to scrutiny by the agency under its general powers, despite the fact that registration is not required.</p> <p>2. If Article 5 were adopted in a particular state, a declarant could not offer or dispose of a residential unit unless that unit were registered with the agency. However, he could offer and dispose of the unit after registration was approved but before the condominium was created, subject to the requirements of Sections 2-101 and 5-103.</p>	<p>HRS Chapter 514A applies to all new condominiums. [See, HRS §514A-1.5 (Applicability of chapter).] However, the fidelity bond requirements of HRS §514A-95.1 (Association of apartment owners registration; fidelity bond) apply only to those condominiums having six or more units.</p> <p>For discussion: In keeping with our desire to lessen the regulatory burden on Hawaii's people, it would seem to be appropriate to exempt smaller condominium projects from most of the requirements of our recodified condominium law (unless they choose to "opt-in" to its provisions). Consistent with HRS §514A-95.1, I have chosen "5" as the maximum number of units in a "small condominium" eligible for exception. [See Recodification Draft #1, §1-203 (Exception for Small Condominiums).]</p>
	<p>§ 5-103. Application for Registration; Approval of Uncompleted Units.</p>	
	<p>(a) An application for registration must:</p> <ol style="list-style-type: none"> (1) be accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91; (2) include a copy of a questionnaire properly filled in; and 3) contain such documents and information concerning the condominium as may be specified by the commission. <p>The questionnaire shall be in such form and content as prescribed by the commission. A declarant promptly shall file amendments to report any actual or expected material change in any document or information contained in the application.</p>	<p>§514A-32 Questionnaire and filing fee. The notice of intention shall be accompanied by:</p> <ol style="list-style-type: none"> (1) A nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91; (2) A copy of a questionnaire properly filled in; and (3) Such documents and information concerning the project as may be specified by the commission. <p>The questionnaire shall be in such form and content as prescribed by the commission.</p>
		<p style="text-align: center;">Condominium Recodification Attorney's Comment</p> <ol style="list-style-type: none"> 1. UCA/UCIOA §5-103(a) reads: "An application for registration must contain the information and be accompanied by any reasonable fees required by the agency's [rules] [regulations]. A declarant promptly shall file amendments to report any actual or expected material change in any document or information contained in the application." 2. See also, §514A-41 "Supplementary public report" below, after UCIOA and UCA's Section 5-109 "Annual Report and Amendments." <p>[Question: Do practitioners and regulators believe that we should retain the statutory "questionnaire" provision?]</p>
		<p>§514A-36 Public reports and registration fees. (a) Concurrently with its filing with the commission of the notification of intention pursuant to sections 514A-31 and 514A-32, the developer shall prepare and submit to the commission a public report disclosing all material facts pertaining to the project. The public report shall be in such form and content as prescribed by the commission. Such public report may not be used for the purpose of selling any apartments in the project unless and until the commission issues an effective date for the public report. The commission's issuance of an effective date for a public report shall not be construed to constitute the commission's approval or disapproval of the project, or the commission's representation that all material facts concerning the project have</p>

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		been fully or adequately disclosed, or the commission's judgment of the value or merits of the project. No effective date for a final public report shall be issued until execution and recordation of the deed or master lease, the declaration, the bylaws, and floor plans, as provided by sections 514A-12, 514A-20, and 514A-81.
		(b) The commission may determine when a public report will supersede the public reports previously issued for the project.
		(c) The developer shall be assessed nonrefundable fees as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, for each effective date requested for a public report, including extensions, if any.
		§514A-37 Preliminary public reports. The commission may issue an effective date for a preliminary public report upon the commission's receipt of a notice of intention the filing of which is complete except for some particular requirement, or requirements, which is, or are, at the time not fulfilled, but which may reasonably be expected to be completed. Preliminary public reports shall not be used for any sale under a contract for the sale of an apartment in a condominium project, unless the developer of the project has filed with the commission those documents and that information required to be submitted with the notification of intention referred to in sections 514A-31 and 514A-32, including a specimen copy of the proposed contract of sale and an executed copy of an escrow agreement with a third party depository for retention and disposition of purchasers' funds in accordance with section 514A-65. The developer shall prepare the preliminary public report so as to ensure that the report adequately discloses all material facts which a prospective purchaser should consider in purchasing an apartment in the project, and shall ensure that adequate protection for purchasers' funds has been provided.
		§514A-39 REPEALED.
		[§514A-39.5] Contingent final public report. (a) Prior to the issuance of an effective date for a final public report, the developer may request that the commission issue an effective date for a contingent final public report. The contingent final public report shall be in the form and content as prescribed by the commission.
		(b) No effective date shall be issued by the commission for a developer's contingent final public report unless there is submitted to the commission:
		(1) Nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
		(2) The proposed developer's contingent final public report;
		(3) All documents, information, and other requirements under section 514A-37 if the commission has not issued an effective date for a preliminary public report;
		(4) An executed and recorded option agreement, agreement of sale, deed, or master lease for the property;
		(5) The executed and recorded declaration, bylaws, and floor plans as filed

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		with the county officer having jurisdiction over the issuance of permits for the construction of buildings, as provided by sections 514A-12, 514A-20, and 514A-81;
		(6) A verified statement showing all costs involved in completing the project, including land payments or lease payments, real property taxes, construction costs, architect, engineering, and attorneys' fees, financing costs, provisions for contingency, etc., which must be paid on or before the completion of construction of the project;
		(7) A verified estimate of the time of completion of construction of the total project;
		(8) An executed copy of the escrow agreement which complies with the requirements of section 514A-64.5 and, if purchaser's funds are to be used for construction, the requirements of sections 514A-40(a)(6) and 514A-67;
		(9) A parking plan to include designated residence parking stalls and guest parking, if any, exclusive of assignment to individual apartments, if parking stalls are to be considered limited common elements; and
		(10) A letter of interest in financing construction of the project from a lender authorized to do business in the State.
		(c) No effective date shall be issued by the commission for a contingent final public report for a project that includes one or more existing structures being converted to condominium status unless there is filed with the commission all items required under subsection (b) and:
		(1) A verified statement signed by an appropriate county official that the project is in compliance with all zoning and building ordinances and codes applicable to the project, and specifying, if applicable: (A) Any variances which have been granted to achieve compliance; and (B) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes;
		(2) A statement by the declarant, based upon a report prepared by an independent Hawaii registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the project; and
		(3) A statement by the declarant of the expected useful life of each item reported on in paragraph (2) or a statement that no representations are made in that regard; provided that this paragraph and paragraph (2) apply only to apartments that may be occupied for residential use and have been in existence for five years or more.
		(d) A contingent final public report shall expire nine months after the effective date of the report and, notwithstanding anything to the contrary in section 514A-43, may not be extended or renewed.
		(e) A contingent final public report is subject to sections 514A-41 and 514A-63.

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(b) If a declarant files with the commission a declaration or proposed declaration, or an amendment or proposed amendment to a declaration, creating units that he proposes to convey before they are substantially completed in the manner required by Sections 2-101(b) and 4-120, the declarant shall also file with the commission:	§514A-40 Final reports. (a) No effective date shall be issued by the commission for a final public report prior to completion of construction of the project, unless there is filed with the commission:
(1) a verified statement showing all costs involved in completing the buildings containing those units;	(1) A statement showing all costs involved in completing the project, including land payments or lease payments, real property taxes, construction costs, architect, engineering, and attorneys' fees, financing costs, provisions for contingency, etc., which must be paid on or before the completion of construction of the project;
(2) a verified estimate of the time of completion of construction of the buildings containing those units;	(2) An estimate of the time of completion of construction of the total project;
(3) satisfactory evidence of sufficient funds to cover all costs to complete the buildings containing those units;	(3) Satisfactory evidence of sufficient funds to cover the total project cost from purchasers' funds, equity funds, interim or permanent loan commitments, or other sources;
(4) a copy of the executed construction contract and any other contracts for the completion of the buildings containing those units;	(4) A copy of the executed construction contract;
[(5) a 100 percent payment and performance bond covering the entire cost of construction of the buildings containing those units;] <u>(5) satisfactory evidence of a performance bond issued by a surety licensed in the State of not less than one hundred per cent of the cost of construction, or such other substantially equivalent or similar instrument or security approved by the commission;</u>	(5) Satisfactory evidence of a performance bond issued by a surety licensed in the State of not less than one hundred per cent of the cost of construction, or such other substantially equivalent or similar instrument or security approved by the commission;
(6) plans for the units conforming to the requirements of Section 2-109(c);	
<p>(7) if purchasers' funds are to be used for the construction of the condominium, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business within the State which provides that:</p> <p>(i) disbursements of purchasers' funds may be made from time to time to pay for construction of the condominium, architectural, engineering, finance, and legal fees, and other costs for the completion of the condominium in proportion to the value of the work completed by the contractor as certified by an independent licensed architect or engineer, on bills submitted and approved by the lender of construction funds or the escrow agent <u>an otherwise qualified financially disinterested person</u>;</p> <p>(ii) disbursement of the balance of purchasers' funds remaining after completion of the condominium must be made only when the escrow agent or lender receives satisfactory evidence that (A) the period for filing mechanic's and materialman's liens has expired, (B) the right to claim those liens has been waived, or (C) adequate provision has been made for satisfaction of any claimed mechanic's or materialman's lien; and</p> <p>(iii) any other restriction relative to the retention and disbursement of</p>	<p>(6) If purchasers' funds are to be used for construction, an executed copy of the escrow agreement for the trust fund required under section 514A-67 for financing construction, which expressly shall provide for:</p> <p>(A) No disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for disbursements that have been approved or certified for payment by the project lender or an otherwise qualified financially disinterested person; and</p> <p>(B) No disbursements from the balance of the trust fund after payment of construction costs pursuant to paragraph (A) until construction of the project has been completed and the escrow agent receives satisfactory evidence that all mechanics' and materialmen's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute;</p>

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purchasers' funds required by the commission;	
(8) <u>a parking plan to include designated residence parking stalls and guest parking, if any, exclusive of assignment to individual units, if parking stalls are to be considered limited common elements;</u>	(7) A parking plan to include designated residence parking stalls and guest parking, if any, exclusive of assignment to individual apartments, if parking stalls are to be considered limited common elements;
(9) <u>a copy of the proposed public offering statement;</u>	(8) A copy of the disclosure statement required by section 514A-62(f)(3) if an effective date for a contingent final public report has been issued by the commission and the report has not expired; and
(10) <u>pursuant to section 1-106(c), an affirmation that the condominium is in compliance with all State and county land use laws, building ordinances and codes, and all other county permitting requirements applicable to the condominium; and</u>	(9) A declaration subject to the penalties set forth in section 514A-49(b) that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to section 514A-1.6.
(11) any other materials or information the commission may require by its rules.	
(c) The commission may not register the units described in the declaration or the amendment unless the commission determines, on the basis of the material submitted by the declarant and any other information available to the commission, that there is a reasonable basis to expect that the units to be conveyed will be completed by the declarant following conveyance.	
<p>UCA (1980) Comment [UCIOA (1994) Comment essentially same]</p> <p>1. Subsection (a) is a general provision empowering the agency by regulation to develop requirements for information to be submitted to the agency, and for the imposition of reasonable fees by the agency. Such rules or regulations, under the Model Act, could be adopted only after providing notice to interested persons and an opportunity to be heard. <i>See</i> Section 3 of the Model Act. The article encourages, but does not require, development of uniform regulations between states adopting Article 5. <i>See</i> Section 5-107(e).</p> <p>2. Subsection (b) departs from the provisions contained in Section 2-101 and Section 4-120 regarding conveyance of units. Under Section 2-101(b), neither a declaration nor an amendment to a declaration adding units to a condominium, may be recorded (and thus no condominium may be created) unless the structural components of the buildings in which those units are located are substantially completed. Under Section 4-120, no unit in a condominium may be conveyed unless the unit itself is substantially completed. In addition, under Section 4-110, any deposit made in connection with the purchase or reservation of a unit must be held in escrow until closing. The combined effect of Sections 2-101, 4-120 and 4-110 is to insure that any funds of a purchaser are held in escrow until his unit is substantially completed, and the purchaser has title.</p> <p>The need for consumer protection suggests that substantial completion of a residential unit should be a prerequisite for adding that unit to the condominium or conveying the unit to a purchaser, in the absence of an agency to control and review condominium projects. Under subsection (b), however, a declarant may file a declaration or proposed declaration, or an amendment to a declaration, for the purpose of creating a condominium in which the buildings are not structurally completed. [Note: <i>UCIOA (1994)</i> changes "structurally completed" to "substantially completed" in Comment.] Subsection (b) contemplates that</p>	

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<p>the agency might nevertheless register the units described in the declaration or amendment, if the agency were satisfied that the units would be completed. Registration would then permit the declarant to offer to sell and convey units which had not yet been built and to record the declaration.</p> <p>In addition, paragraph (7) of Section 5-103(b) contemplates that purchaser's funds might be used, despite the language of Section 4-110 for construction of the condominium. Controls are imposed, however, to insure that disbursements are made in accordance with the value of work completed and approved by an escrow agent.</p> <p>Note that the common elements in the condominium under the Act need not be completed at the time of the sale, even in the absence of an agency. Completion of common elements, however, is governed by Section 4-119 (Obligation to Complete and Restore).</p> <p>3. The agency, by regulation, should determine the parties whom the payment and performance bond required under paragraph (b)(5) indemnifies.</p>	
<p>§ 5-103.1. Same; Condominiums Containing Conversion Buildings. No condominium that includes one or more existing structures being converted to condominium status shall be registered unless there is filed with the commission all items required under subsection (a) and:</p>	<p>§514A-40 Final reports.</p> <p>....</p> <p>(b) No effective date shall be issued by the commission for a final public report for a project that includes one or more existing structures being converted to condominium status unless there is filed with the commission all items required under subsection (a) and:</p>
<p>(1) a statement signed by an appropriate county official that the project is in compliance with all land use and building ordinances and codes applicable to the condominium, and specifying, if applicable:</p> <p style="padding-left: 40px;">(A) any variances which have been granted to achieve such compliance;</p> <p>and</p> <p style="padding-left: 40px;">(B) whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes;</p>	<p>(1) A statement signed by an appropriate county official that the project is in compliance with all zoning and building ordinances and codes applicable to the project, and specifying, if applicable:</p> <p style="padding-left: 40px;">(A) Any variances which have been granted to achieve such compliance;</p> <p>and</p> <p style="padding-left: 40px;">(B) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes;</p>
<p>(2) A statement by the declarant, based upon a report prepared by an independent Hawaii licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium; and</p>	<p>(2) A statement by the declarant, based upon a report prepared by an independent Hawaii registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the project; and</p>
<p>(3) A statement by the declarant of the expected useful life of each item reported on in paragraph (2) or a statement that no representations are made in that regard; provided that this paragraph and paragraph (2) apply only to units that may be occupied for residential use and have been in existence for at least five years.</p>	<p>(3) A statement by the declarant of the expected useful life of each item reported on in paragraph (2) or a statement that no representations are made in that regard; provided that this paragraph and paragraph (2) apply only to apartments that may be occupied for residential use and have been in existence for five years or more.</p>
	<p>(c) No effective date shall be issued by the commission for a final public report until the developer has paid into the condominium management education fund a nonrefundable fee of \$5 for each apartment in the project. Fees required by this subsection shall be subject to adjustment as prescribed by rules adopted by the</p>

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		director of commerce and consumer affairs pursuant to chapter 91. Payments required under this subsection shall be due after June 13, 1989.
		Condominium Recodification Attorney's Comment 1. Since condominium conversions involve existing structures and a county might not otherwise have the opportunity to address land use matters in these situations, it is appropriate to require county certification of compliance with its land use laws when converting existing structures to the condominium form of ownership. 2. §514A-40(c) is incorporated in Recodification §5-101.3.
	§ 5-104. Receipt of Application; Order or Registration.	
	(a) The commission shall acknowledge receipt of an application for registration within 5 business days after receiving it. Within 60 days after receiving the application, the commission shall determine whether:	
	(1) the application and the proposed public offering statement satisfy the requirements of this chapter and the commission's rules;	
	(2) the declaration and bylaws comply with this chapter; and	
	(3) it is likely that the improvements the declarant has undertaken to make can be completed as represented.	
		§514A-33 Inspection. After appropriate notification has been made or additional information has been received pursuant to sections 514A-31, 514A-32, 514A-39.5, 514A-40, or 514A-41, an inspection of the condominium project may be made by the commission.
		§514A-34 Inspection expenses. When an inspection is to be made of projects, the developer shall be required to pay an amount estimated by the commission to be necessary to cover the actual expenses of the inspection, not to exceed \$500 a day for each day consumed in the examination of the project plus reasonable first-class transportation expenses.
		§514A-35 Waiver of inspection. The commission may waive an inspection when in its opinion, a preliminary, contingent final, final, or supplementary public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries.
	(b) If the commission makes a favorable determination, it shall issue promptly an order registering the condominium. Otherwise, unless the declarant has consented in writing to a delay, the commission shall issue promptly an order rejecting registration.	
	(c) The director of commerce and consumer affairs may contract with private consultants for the review of documents and information submitted to the commission pursuant to this chapter. The cost of such review by private consultants shall be borne by the developer.	§514A-38 Request for effective date or hearing by developer. The director of commerce and consumer affairs may contract with private consultants for the review of documents and information submitted to the commission pursuant to this chapter. The cost of such review by private consultants shall be borne by the developer. If an effective date for a public report is not issued within a reasonable time after compliance with registration requirements, or if the developer is

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		<p>materially grieved by the form or content of the public report, the developer may, in writing, request and shall be given a hearing by the commission within a reasonable time after receipt of request.</p>
	<p style="text-align: center;">UCA (1980) Comment [UCIOA (1994) Comment essentially same]</p> <p>1. This section provides reasonable deadlines for agency review of an application for registration, and describes the standards by which the application should be measured. The agency is directed to review the documents provided to the purchaser, and is given a great deal of discretion in mandating the form and content of the public offering statement; <i>see</i> Section 5-110.</p> <p>2. The agency is also charged with reviewing those common element improvements which a declarant has promised to make, and which would be labeled under Section 4-118 as “MUST BE BUILT,” to determine whether the declarant has the financial capacity to build them.</p> <p>3. In the event the agency were to issue an order rejecting registration under subsection (b), an important issue concerning judicial review of that order may arise in some states.</p> <p>The order would appear to be a rejection of an application for a license, as defined in Section 1(3) of the Model Act; it would be a “contested case”, however, within the meaning of Section 1(2) of the Model Act, only if “an opportunity for hearing” is provided. No right to a hearing, or right of appeal, is provided in the Act.</p> <p>The order rejecting registration thus might not be appealable under Section 15 of the Model Act, because judicial review is provided under Section 15 only for “contested cases”. While that section does not limit utilization of, or the scope of judicial review available under, other means of review, some courts have held that, in the absence of specific statutory authority to hear an appeal from an administrative decision, courts have no jurisdiction to entertain such an appeal. <i>See, e.g., Rybinski v. State Employees’ Retirement Comm.</i>, 173 Conn. 462 (1977).</p> <p>Accordingly, the law of each state should be carefully reviewed. In cases where the state administrative procedure act provides for appeals from decision on licensing matters made by state agencies regardless of the availability of a hearing, no amendment would be required.</p>	<p style="text-align: center;">Condominium Recodification Attorney’s Comment</p>
		<p>§514A-43 Automatic expiration of public reports; exceptions. (a) Except as provided in section 514A-39.5, a public report shall expire thirteen months after the effective date of the report. The commission, upon submission of a written request for an extension by the developer at least thirty calendar days prior to the expiration date, together with such supporting information as may be required by the commission, a review of the registration, and after payment of a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, may issue an order extending the effective date of the preliminary, final, or supplemental public report.</p>
		<p>(b) The commission may issue an order that the final public report for a two-</p>

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		<p>apartment condominium project shall have no expiration date, provided that the developer submits to the commission:</p> <p>(1) A written request for such an order not later than thirty calendar days prior to the next expiration date of the final public report;</p> <p>(2) Satisfactory evidence that one or both apartments are either retained by the developer, or conveyed to an irrevocable trust to benefit a spouse or family member of the developer. A family member is anyone related by blood, descent, or adoption; and</p> <p>(3) Payment of a nonrefundable fee as provided by rules adopted by the department of commerce and consumer affairs pursuant to chapter 91.</p> <p>The final report shall be subject to the supplemental public report requirements as provided in section 514A-41(a).</p> <p>The developer receiving an order under this subsection shall provide written notification to the commission within thirty calendar days of any subsequent sale and conveyance of either apartment to any person.</p>
		<p>§514A-42 True copies of public report; no misleading information. The public reports given by the developer to prospective purchasers shall be an exact reproduction of the public report for which the commission has issued an effective date. All documents (including the public report) prepared by or for the developer and submitted to the commission in connection with the developer's registration of the project, and all information contained in such documents, shall be true, complete and accurate in all respects, and shall not contain any misleading information, or omit any information which would render the information or documents submitted to the commission misleading in any material respect.</p>
	<p>§ 5-105. Cease and Desist Orders. If the commission determines, after notice and hearing, that any person has disseminated or caused to be disseminated orally or in writing any false or misleading promotional materials in connection with a condominium, or that any person has otherwise violated any provision of this chapter or the agency's rules or orders, the commission may issue an order to cease and desist from that conduct, to comply with the provisions of this chapter and the agency's rules and orders, or to take affirmative action to correct conditions resulting from that conduct or failure to comply.</p>	<p>§514A-47 Cease and desist orders. In addition to its authority under section 514A-48, whenever the commission has reason to believe that any person is violating or has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 514A-134, or the rules of the commission adopted pursuant thereto, it shall issue and serve upon the person a complaint stating its charges in that respect and containing a notice of a hearing at a stated place and upon a day at least thirty days after the service of the complaint. The person served has the right to appear at the place and time specified and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law or the rules of the commission charged in the complaint. If upon the hearing the commission is of the opinion that this chapter or the rules of the commission have been or are being violated, it shall make a report in writing stating its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court.</p>

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		§514A-48 Power to enjoin. Whenever the commission believes from satisfactory evidence that any person has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 514A-134, or the rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter and bring an action in the name of the people of the State in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.
		§514A-49 Penalties. (a) Any person who violates or fails to comply with section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, 514A-132, or 514A-134, is guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000 or by imprisonment for a term not exceeding one year, or both. Any person who violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the commission under section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, 514A-132, or 514A-134 shall be punished by a fine not exceeding \$10,000.
		(b) Any person who violates any provision of this chapter or the rules of the commission adopted pursuant thereto shall also be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense.
		Condominium Recodification Attorney's Comment §514A-49(b) incorporated in Recodification §5-106.1 (Civil Penalty).
	§ 5-106. Revocation of Registration.	
	(a) The commission, after notice and hearing, may issue an order revoking the registration of a condominium upon determination that a declarant or any officer or principal of a declarant has:	
	(1) failed to comply with a cease and desist order issued by the commission affecting that condominium;	
	(2) concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of units in that condominium;	
	(3) failed to perform any stipulation or agreement made to induce the commission to issue an order relating to that condominium;	
	(4) misrepresented or failed to disclose a material fact in the application for registration; or	[See also, §514A-98 above, relating to "False Statement."]
	(5) failed to meet any of the conditions described in Sections 5-103 and 5-104 necessary to qualify for registration.	
	(b) A declarant may not convey, cause to be conveyed, or contract for the conveyance of any interest in a unit while an order revoking the registration of the condominium is in effect, without the consent of the agency.	

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(c) In appropriate cases the commission, in its discretion, may issue a cease and desist order in lieu of an order of revocation.	
<p style="text-align: center;">UCA (1980) Comment [UCIOA (1994) Comment essentially same]</p> <p>1. This section permits the agency, after notice and hearing, to revoke a prior registration of a condominium. Under Section 15 of the Model Act, the revocation would not be effective until the last day for seeking review of the agency order. While the filing of the appeal would not stay the agency's decision, the agency or reviewing court could grant a stay of the revocation. Naturally, this result may vary in a particular state.</p> <p>2. A declarant is prohibited from disposing of any interest in a unit when registration has been revoked, without consent of the agency.</p>	Condominium Recodification Attorney's Comment
§ 5-106.1. Civil Penalty. Any person who violates any provision of this chapter or the rules of the commission adopted pursuant thereto shall also be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense.	<p style="background-color: yellow;">[Note: Add language re: cumulative nature of penalty.]</p>
§ 5-106.2. Limitation of Action. No civil or criminal actions shall be brought by the State pursuant to this chapter more than two years after the discovery of the facts upon which such actions are based or ten years after completion of the sales transaction involved, whichever has first occurred.	§514A-50 Limitation of action. No civil or criminal actions shall be brought by the State pursuant to this chapter more than two years after the discovery of the facts upon which such actions are based or ten years after completion of the sales transaction involved, whichever has first occurred.
§ 5-107. General Powers and Duties of Agency	
(a) The commission may adopt, amend, and repeal rules and issue orders consistent with and in furtherance of the objectives of this chapter, but the commission may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this chapter. The commission may prescribe forms and procedures for submitting information to the commission.	[See, §514A-99 above, which reads: "The commission shall adopt, amend, or repeal such rules as it may deem proper to fully effectuate this chapter."]
	§514A-45 Supplemental regulations governing a condominium property regime. Whenever they deem it proper, the commission, the county councils of the various counties or the city council of the city and county of Honolulu may adopt supplemental rules and regulations governing a condominium property regime established under this chapter in order to implement this program; provided that any of the supplemental rules and regulations adopted shall not conflict with this chapter or with any of the rules and regulations adopted by the commission to implement this chapter.
(b) If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter or any of the commission's rules or orders, the commission without prior administrative proceedings may maintain an action in the appropriate court to enjoin that act or practice or for other appropriate relief. The commission is not required to post a bond or prove that no adequate remedy at law exists.	
(c) The commission may intervene in any action involving the powers or responsibilities of a declarant in connection with any condominium for which an application for registration is on file.	

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	(d) The commission may accept grants in aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this chapter.	
	(e) The commission may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the commission's duties.	
	(f) In issuing any cease and desist order or order rejecting or revoking registration of a condominium, the commission shall state the basis for the adverse determination and the underlying facts.	
	(g) The commission, in its sound discretion, may require bonding, escrow of portions of sales proceeds, or other safeguards it may prescribe by its rules to guarantee completion of all improvements which a declarant is obligated to complete pursuant to Section 4-119 (Declarant's Obligation to Complete and Restore).	
	<p style="text-align: center;">UCA (1980) Comment [UCIOA (1994) Comment essentially same]</p> <p>1. Under subsection (a), the agency is empowered to adopt regulations and issue orders in furtherance of the objectives of this Act. Those objectives are the same as the underlying purposes of the Act. The agency, however, is prohibited from intervening in the internal activities of the association except to the extent necessary to prevent or cure violations of this Act. The principal purpose of the agency is to regulate the behavior of the declarant, not the behavior of individual unit owners. If, however, the declarant is misusing the association by virtue of his power to control its activities, and thereby violating the Act, the agency may act to prevent the violation.</p> <p>2. Subsection (g) empowers the agency to require bonding, escrow, or other safeguards to guarantee completion of improvements labeled "MUST BE BUILT" (Sections 2-109, 4-118).</p> <p>A substantive requirement for bonding is not included under Article 4 for all condominiums, in all circumstances. While some states have adopted bonding and escrow requirements for completion of the common elements (<i>see, e.g.</i>, Section 47-74d, Conn.Gen.Stat.), the available economic evidence indicates that a universal bonding requirement would increase the cost of condominiums, and that the cost of such provisions may not always be justified. The principal concern for consumer protection in this regard has been resolved in the Act by requiring substantial completion of all units prior to conveyance (Section 4-120) and by requiring labeling of common elements as either "MUST BE BUILT" or "NEED NOT BE BUILT."</p> <p>At the same time, particularly in the case of condominiums registered under Section 5-103(b), there may be individual cases where the agency, in its discretion, may find escrowing or bonding to be in the public interest. For that reason, this power is included only as a permissible power for the agency under Article 5.</p>	<p style="text-align: center;">Condominium Recodification Attorney's Comment</p>
	§ 5-108. Investigative Powers of Agency.	§514A-46 Investigatory powers.

Article 5. Administration and Registration of Condominiums (Recodification Draft #1)

<p style="text-align: center;"><u>Hawaii Condominium Law Recodification Draft #1</u> [Based on Comparison of UCIOA (1994), UCA (1980), and HRS Chapter 514A; organization follows Uniform Laws]</p>	<p style="text-align: center;"><u>Hawaii's Present Condominium Law</u> Chapter 514A, Hawaii Revised Statutes (HRS) <i>(Compare with Proposed Recodified Condominium Law in left-hand column)</i></p>
<p>(a) The commission may initiate public or private investigations within or outside this State to determine whether any representation in any document or information filed with the commission is false or misleading or whether any person has engaged, is engaging, or is about to engage in any unlawful act or practice.</p>	<p>If the commission has reason to believe that any person is violating or has violated section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 514A-134, or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of the association of apartment owners, the board of directors, the managing agent, the real estate broker, the real estate salesperson, the purchaser, or the developer. For the purposes of this examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker pursuant thereto, and shall make the records accessible to the commission upon reasonable notice and demand.</p>
<p>(b) In the course of any investigation or hearing, the commission may subpoena witnesses and documents, administer oaths and affirmations, and adduce evidence. If a person fails to comply with a subpoena or to answer questions propounded during the investigation or hearing, the commission may apply to the appropriate court for a contempt order or injunctive or other appropriate relief to secure compliance.</p>	
<p style="text-align: center;">UCA (1980) Comment [UCIOA (1994) Comment essentially same]</p> <p>The powers enumerated in Sections 5-107 and 5-108 are specifically granted to the agency because of judicial determinations in various states that, in the absence of such statutory powers, agencies have no authority to act.</p>	<p style="text-align: center;">Condominium Recodification Attorney's Comment</p>
<p>§ 5-109. Annual Report and Amendments.</p>	
<p>(a) A declarant, within 30 days after the anniversary date of the order of registration, annually shall file a report to bring up-to-date the material contained in the application for registration and the public offering statement. This provision does not relieve the declarant of the obligation to file amendments pursuant to subsection (b).</p>	
<p>(b) A declarant promptly shall file amendments to the public offering statement with the commission.</p>	<p>§514A-41 Supplementary public report. (a) If after the effective date has been issued by the commission for a public report, any circumstance occurs which would render the public report misleading as to purchasers in any material respect, the developer shall stop all offers of sale and sales and immediately submit to the commission a supplementary public report, together with such supporting information as may be required by the commission, to update the information contained in the public report, accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Offers of sale and sales shall not resume until an effective date has been issued by the commission for the supplementary public report. The developer shall provide all prospective purchasers with a true copy of the supplementary public report and all prior public reports not superseded by the supplementary public report.</p> <p>(b) The commission may determine when a supplementary public report will</p>

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		<p>supersede the public reports previously issued for the project.</p> <p>(c) Notwithstanding the provisions of this section, the rescission rights, if any, of a purchaser shall be governed exclusively by sections 514A-62 and 514A-63. This does not preclude a purchaser from exercising any rescission rights pursuant to a contract for sale or any applicable common law remedies.</p> <p>(d) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E, and for which a disclosure statement is effective and required to be delivered to the purchaser or prospective purchaser.</p>
	<p>(c) If an annual report reveals that a declarant owns or controls units representing less than 25 percent of the voting power in the association and that a declarant has no power to increase the number of units in the condominium, or to cause a merger or confederation of the condominium with other condominiums, the commission shall issue an order relieving the declarant of any further obligation to file annual reports. Thereafter, so long as the declarant is offering any units for sale, the commission has jurisdiction over the declarant's activities, but has no other authority to regulate the condominium.</p>	
	<p style="text-align: center;">UCA (1980) Comment [UCIOA (1994) Comment essentially same]</p> <p>1. This section requires annual reports from a declarant to the agency in order to keep the information filed with the agency current. This requirement parallels the declarant's obligation to provide a current public offering statement to unit owners. <i>See</i> Section 4-103(c).</p> <p>2. Under subsection (c), if the period of declaration control has passed, the declarant is relieved of the obligation to continue to file an annual report. However, the obligation to continue to provide public offering statements is imposed on a declarant under Section 4-103(c) so long as he is offering any unit for sale. The agency would thus continue to have jurisdiction over the declarant's activities, but would have no other authority to regulate the condominium.</p>	<p style="text-align: center;">Condominium Recodification Attorney's Comment</p> <p>It appears that §5-109 renders the substance of HRS §§514A-41 and 514A-43 unnecessary.</p>
	<p>§ 5-110. Agency Regulation of Public Offering Statement.</p>	
	<p>(a) The commission at any time may require a declarant to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.</p>	
	<p>(b) The public offering statement may not be used for any promotional purpose before registration and afterwards only if it is used in its entirety. No person may advertise or represent that the commission has approved or recommended the condominium, the disclosure statement, or any of the documents contained in the application for registration.</p>	
	<p>(c) In the case of a condominium situated wholly outside of this State, an application for registration or proposed public offering statement filed with the commission which has been approved by an agency in the State where the condominium is located and substantially complies with the requirements of this</p>	

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<p>chapter may not be rejected by the commission on the grounds of non-compliance with any different or additional requirements imposed by this chapter or by the commission's rules. However, the commission may require additional documents or information in particular cases to assure adequate and accurate disclosure to prospective purchasers.</p>	
<p style="text-align: center;">UCA (1980) Comment [UCIOA (1994) Comment essentially same]</p> <p>1. Subsection (c) attempts to facilitate interstate sales of units by requiring the agency in the enacting state to accept an agency-approved public offering statement from the state where the condominium is located. This avoids the need for a different public offering statement in several states for the same project. If no agency exists in the state where the condominium is located, however, a public offering statement must be prepared and approved before offering an out-of-state unit in an enacting state.</p> <p>2. Because of the bracketed language contained in Section [1-102(e)] 1-208, which should be inserted in the Act if Article 5 is enacted, a foreign condominium must only be registered under this Article in an enacting state if a declarant is "offering" the condominium in the enacting state. Thus, general advertising which did not meet the definition of "offering" could be circulated in the enacting state without registration. If an "offering" is once made, however, then all of Article 5 applies to the foreign condominium. Any "disposition" of a foreign residential condominium in an enacting state, of course, would require delivery of a public offering statement even in the absence of an agency; <i>see</i> Section [1-102(e)] 1-208. If an agency exists in the enacting state, any disposition in that state would be illegal if the condominium were not registered in the enacting state; <i>see</i> Section [5-102] 1-208.</p>	<p style="text-align: center;">Condominium Recodification Attorney's Comment</p> <p>Cite to section in UCA/UCIOA Comment 2 was corrected. (Correction is in italics.)</p>
	<p style="text-align: center;">Condominium Recodification Attorney's Comment</p> <p>1. HRS Chapter 514A Part VI (Sales to Owner-Occupants) has not been included in the recodification. It sought to address a problem that no longer exists and unnecessarily burdens those in the business of building and selling condominiums. (As with all recommendations in this first draft, deletion of HRS Chapter 514A Part VI is up for discussion. If it remains out, we will draft a full and explanation.)</p> <p>2. HRS Chapter 514A Part VII (Arbitration; Mediation) is being incorporated in Recodification Article 3 (Management of Condominium) under §3-102.2 (Alternative Dispute Resolution). Much work remains to be done on crafting an alternative dispute resolution mechanism for condominiums that really works.</p> <p>3. HRS Chapter 514A Part VIII (Condominium Management Education Fund) has been incorporated in Recodification Article 5 (Administration and Registration of Condominiums) under §5-101.21, et seq. (Condominium Education Fund).</p>

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		4. HRS §514A-134 (False statement) has not been included in the recodification. It is redundant and its criminal penalty is impractical. 5. HRS §514A-135 (Rules) has not been included in the recodification. It is redundant.